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| 10/767,867 | 01/29/2004 | Damon H. DeHart | ABB-126-A | 4117 |
| 48980 | 7590 | 06/21/2010 | | |
| YOUNG BASILE 3001 WEST BIG BEAVER ROAD SUITE 624 TROY, MI 48084 | | | | |
| EXAMINER | | | | |
| NGUYEN, TUAN VAN | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3731 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 06/21/2010 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@youngbasile.com

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/767,867

Applicant(s)

DEHART, DAMON H.

Examiner

TUAN V. NGUYEN

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4, 6-10, 32, 63, 65 and 66.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731

/T. V. N./
Examiner, Art Unit 3731

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but they are not persuasive. As to the argument that Ehrlich/Humphrey fails to disclose the limitation of "hollowed a long a portion of its length". Claim 1 recites the "comprising" in the preamble of the claim. "comprising" indicates the claim is opened end. Further, noting that applicants fail to define the structure of the rest of the length of the lancet member. Examiner contends that Ehrlich/Humphrey discloses the limitation of "hollowed a long a portion of its length" because the gullet is considered partially hollowed when the needle of Ehrlich as modified by Humphrey is made from a solid needle (Humphrey suggests that the needle/lancet can be hollow or solid. As to the argument that the both Ehrlich and Humphrey fail to disclose a penetration distance that is less than a length of the sharpened tips. Ehrlich specifically discloses the point is designed to give a length of 1 to 3 mm, which is the penetration depth that provide the most abundant capillaries (Col. 2:7-10 and Col. 3:10-15) and limiting the length of the penetration point itself to about 1 to 3 mm (col. 3, lines 60-63) and suitable stop means. Ehrlich further discloses penetrate the point more than the length of the point will not increase blood flow (col. 4, lines 10-20). Based on the passages above, Examiner contends that one of ordinary skill in the art would recognize that the depth of penetration should be about the same with the length of lancet point because it has been proven to be the effective depth of penetration .